



April 9, 2007

**Ex Parte Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

*Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, WT Docket 06-49*

Dear Ms. Dortch:

On March 30, 2007, Itron submitted another in a series of *ex parte* filings in the above-captioned proceeding.<sup>1</sup> Much in Itron's latest filing is not new and therefore needs no further comment. But Progeny LMS, LLC ("Progeny") believes that several points should be respectfully brought to the Commission's attention.

**The Purdue Study.** Itron, in its letter, misconstrues the intent of the Purdue University study regarding the proposed use of Multilateration-Location and Monitoring Service ("M-LMS") spectrum. Progeny commissioned this research project to study the uses of the M-LMS band spectrum, including the best ways to deploy a wireless service using Progeny's Enhanced Position Location technology. Because the FCC already has a full record in this docket which is ripe for final action, the research was not commissioned for the purpose of adding to the record in this long-running proceeding. If that had been Progeny's intent, the project's duration would have been far shorter than one year. If anything, any revised rules should be an input to this study, because they will affect technologies that can be selected for a deployment.

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<sup>1</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Henry Goldberg, Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, *Ex Parte* Presentation, WT Docket No. 06-49 (March 30, 2007) (The Letter).

**Itron's Use of the Entire 902-928 MHz Band.** Progeny's statement that Itron's devices operate primarily in the  $915 \pm 5$  MHz part of the band was based on a review of a sample of Itron's equipment authorizations. Progeny's measurements in the Washington, DC area confirm the pattern.<sup>2</sup> In fact, until just this year, Itron was telling its stockholders much the same thing. Itron's SEC Form 10-K for 2005 said:

Our ERT modules and AMR-equipped electronic residential electricity meters are typically Part 15 devices that transmit information back to handheld, mobile or fixed network AMR reading devices in the 910-920 MHz band pursuant to these rules.<sup>3</sup>

This or a similar statement is omitted from Itron's Form 10-K for 2006, which together with Itron's recent equipment authorizations, suggests that until recently Itron was not using more than 250 kHz<sup>4</sup> of the M-LMS portion of the band. Certainly Itron has been on notice, since at least the time the Notice of Proposed Rulemaking was issued if not before, that they would be expected to operate with licensed service with higher status in the band hierarchy.<sup>5</sup>

**Interpretation of Progeny's Monitoring Results.** The Letter says that Itron and the Part 15 Coalition are analyzing Progeny's study of usage in the 902-928 MHz band in the Washington, DC area. Progeny looks forward to reviewing and commenting on their analysis. However, the letter is misleading when it equates efficient use of the band with engineering measures such as bits per Hertz. The plain fact of the matter, demonstrated by Progeny's study, is that the band is hardly used at all. Progeny's measurements show that the M-LMS spectrum (specifically, Block C) has a signal in it less than one percent of the business day. How can any policymaker consider such low utilization of such potentially valuable spectrum to be efficient?

**The Need for Further Business Information From Progeny.** Itron's demand of Progeny and the Commission for the public disclosure of Progeny's business plan is improper both because it seeks to disadvantage

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<sup>2</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Janice Obuchowski Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Ex Parte Presentation, WT Docket No. 06-49 (March 14, 2007) (The Progeny Study).

<sup>3</sup> Itron, Inc., SEC Form 10-K for the period ending December 31, 2005, filed February 24, 2006; p. 9.

<sup>4</sup> That is 919.75-920 MHz.

<sup>5</sup> *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz bands*, Notice of Proposed Rulemaking, WT Docket 06-49, Rel. March 7, 2006 (NPRM).

Progeny unfairly through disclosure of confidential proprietary information and because Itron clearly understands that the FCC does not and should not require the disclosure of one competitor's business plans to all others.

The Commission took an important step a year ago in releasing an NPRM that initiated a comprehensive re-examination of its Part 90 Rules as they pertain to the 904-909.75 MHz and 919.75-928 MHz bands.<sup>6</sup> Itron's contention represents yet another attempt to unnecessarily delay this proceeding further and prevent the Commission from fulfilling its public interest obligation to ensure the efficient use of this spectrum. Itron has repeatedly used this argument, in the absence of technical substance, in seeking to obtain delay of a request for service flexibility that has been consistently granted elsewhere by the Commission. Furthermore, Itron's proposition of disclosure of business information is not even supported by its own citation.<sup>7</sup> We are confident the FCC will recognize and reject this delaying tactic.

In accordance with Section 1.1206(b) of the Commission's Rules, please accept this filing. Should you have any questions or concerns in connection with this submission, please contact me at (202) 371-2800.

Sincerely,



Janice Obuchowski

Cc: Fred Campbell  
Julius Knapp  
James Schlichting

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<sup>6</sup> Since 1995, these bands have been licensed to several entities, including Progeny, for M-LMS. Progeny is the largest holder of spectrum in the M-LMS band, with 8 MHz of bandwidth in Economic Areas covering a population of 235 million. In addition, these bands have also been the home of federal uses, Amateur Service and a variety of unlicensed uses under Part 15 of the Commission's Rules.

<sup>7</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) as cited by Itron does not support its contention as purported.